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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

OWEN DIAZ,  
  
Plaintiff,  
  
v.  
  
TESLA, INC. d/b/a TESLA MOTORS, INC.,  
  
Defendant.

Case No. 3:17-cv-06748-WHO

**DECLARATION OF DANIEL C. POSNER  
IN SUPPORT OF TESLA'S NOTICE OF  
EVIDENCE RE: INCIDENT INVOLVING  
MICHAEL WHEELER**

Trial Date: March 27, 2023  
Time: 8:30 a.m.  
Place: Courtroom 2, 17th Floor  
Judge: Hon. William H. Orrick

**DECLARATION OF DANIEL C. POSNER**

I, Daniel C. Posner, hereby declare:

1. I am a member of the State Bar of California and of this Court and am counsel for Defendant Tesla, Inc. (“Tesla”) in this matter. I have personal knowledge of the facts set forth in this declaration, and if called as a witness I could and would testify competently thereto.

2. I make this declaration in support of Tesla’s Notice of Evidence regarding Plaintiff Owen Diaz’s awareness of an alleged incident of harassment involving Michael Wheeler.

3. Attached hereto as Exhibit A is a true and correct copy of excerpted testimony from the December 3, 2018 deposition of Owen Diaz, with the relevant excerpts highlighted.

4. Attached hereto as Exhibit B is a true and correct copy of excerpted testimony from the June 12, 2019 deposition of Michael Wheeler, with the relevant excerpts highlighted.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 3<sup>rd</sup> day of March 2023 in Los Angeles, California.

/s/ Daniel C. Posner  
Daniel C. Posner

# EXHIBIT A

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3

4 -----  
5 DEMETRIC DI-AZ, OWEN DIAZ and  
6 LAMAR PATTERSON, an individual,

7 Plaintiffs,

8 vs.

No. 3:17-cv-06748-WHO  
VOL II, pgs 187 - 292

9  
10 TESLA, INC. DBA TESLA MOTORS,  
11 INC.; CITISTAFF SOLUTIONS,  
12 INC.; WEST VALLEY STAFFING  
GROUP; CHARTWELL STAFFING  
SERVICES, INC. and DOES 1-10,  
inclusive,

13 Defendants.  
14 -----

15  
16 CONFIDENTIAL

17 VIDEOTAPED DEPOSITION OF

18 OWEN DIAZ

19 SAN FRANCISCO, CALIFORNIA

20 MONDAY, DECEMBER 3, 2018  
21

22  
23 Reported by:

24 GINA V. CARBONE, CSR #8249  
25 RPR, RMR, CRR, CCR  
FILE NO.: 18-27207

CONDENSED  
TRANSCRIPT

**CONFIDENTIAL**



1 and Tom Kawasaki as people who might have  
2 information regarding the harassing, offensive, and  
3 inappropriate conduct that you experienced while you  
4 were working at the Tesla factory. Anybody else?  
5 A. At this particular time, I can't recall.  
6 Q. What information do you believe Michael  
7 Wheeler has about your claims?  
8 A. He was present when the picaninny was  
9 found.  
10 Michael Wheeler, himself, was a victim of  
11 said harassment. They had wiped feces on the cart  
12 that he was using to harass him. And you would have  
13 to talk to Michael Wheeler. He can get more in  
14 detail with that.  
15 Q. So you said he was present during the,  
16 quote, picaninny drawing that was found, correct?  
17 A. Yes.  
18 Q. And you said he "was a victim of said  
19 harassment." What harassment was he a victim of?  
20 A. Discriminatory racial.  
21 Q. What discriminatory or racial conduct?  
22 A. Michael Wheeler is an African-American man.  
23 Q. And what conduct do you believe that he was  
24 a victim of?  
25 A. I just said that they had smeared feces

Page 208

1 over the utility cart or golf cart that he was  
2 using. You would have to get more in detail with  
3 that with Michael Wheeler. I don't want to speak  
4 upon his feelings. He can relay that to you more  
5 himself.  
6 Q. And what other conduct do you believe he  
7 was the victim of besides the feces?  
8 A. You would have to ask Michael Wheeler.  
9 Q. I'm asking you, though.  
10 A. I'm just saying, reason being, is just he  
11 can give you a little bit more in detail of what  
12 happened to him. I can just -- I just told you the  
13 feces, the harassment. That's basically what I know  
14 what he had -- he had went through.  
15 So in order to get details that you're  
16 trying to get, you'd have to ask Mr. Wheeler.  
17 Q. But he discussed some conduct that you  
18 believe was harassing towards him with you, correct?  
19 A. Yes.  
20 Q. Okay. Besides the feces, what other  
21 conduct that you believe was harassment did he  
22 discuss with you?  
23 A. Being called the N-word. Stuff like that.  
24 Q. Anything else?  
25 A. Not that I can recall at this particular

Page 209

1 moment.  
2 Q. Did he tell you who had wiped feces on the  
3 cart?  
4 A. I believe he was trying to get Ed Romero,  
5 Jaime Salazar, and Victor Quinterez (verbatim) to  
6 pull video surveillance of it.  
7 Q. Do you know who had wiped feces on the  
8 cart?  
9 A. No.  
10 Q. Did he ever tell you if he found out who  
11 had wiped feces on the cart?  
12 A. I don't recall.  
13 Q. Did he ever tell you whether Edward Romero,  
14 Victor Quintero, and Jaime Salazar had pulled the  
15 video?  
16 A. He was pretty upset about them sweeping it  
17 under the rug.  
18 Q. He told you that?  
19 A. Yes.  
20 Q. Do you know if he -- if the video was ever  
21 pulled?  
22 A. No. I don't know.  
23 Q. Do you know what happened as a result of  
24 Mr. Wheeler having told you that feces were wiped on  
25 the cart?

Page 210

1 MR. ORGAN: Objection. Vague and  
2 ambiguous.  
3 THE WITNESS: You'd have to ask  
4 Mr. Wheeler.  
5 BY MS. ANTONUCCI:  
6 Q. Do you know if any actions were taken as a  
7 result of feces being wiped on the cart?  
8 A. I don't believe there were.  
9 Q. Why don't you believe there were?  
10 A. He was pretty adamant about the situation.  
11 Q. What does that mean?  
12 A. It was just another incident that was swept  
13 under the rug by the company. He felt that -- well,  
14 I'm saying that he felt that he was being treated  
15 less than a human being.  
16 Q. Did he tell you that?  
17 A. Not in words. No.  
18 Q. What did he tell you about the incident of  
19 the feces on the cart?  
20 A. He mentioned it.  
21 Q. What did he tell you about it?  
22 A. He told me he went to go get the cart from  
23 the charging station. When he got ready to sit in  
24 the cart, he noticed that it was feces and on the --  
25 I believe it was the steering wheel and the seat.

Page 211

1 He kind of asked -- I believe he asked what was some  
2 of his recourses that he could take.  
3 Q. Who did he ask what recourses he could  
4 take?  
5 MR. ORGAN: Objection. Calls for  
6 speculation.  
7 THE WITNESS: I can't recall.  
8 BY MS. ANTONUCCI:  
9 Q. Did he tell you anything else about the  
10 feces on the cart?  
11 A. Not that I can recall at this time.  
12 Q. You also mentioned that Mr. Wheeler told  
13 you he was called the N-word; is that right?  
14 A. I believe so. Yes.  
15 Q. What did he tell you about that?  
16 A. I can't recall this particular one.  
17 Q. Did he tell you who called him the N-word?  
18 A. I can't recall.  
19 Q. Did he tell you whether he reported the  
20 N-word?  
21 A. I can't recall.  
22 Q. Did he tell you if any actions were --  
23 resulted from his report of the N-word?  
24 A. I can't recall.  
25 Q. Did he tell you if anybody witnessed him

Page 212

1 being called the N-word?  
2 A. I can't recall.  
3 Q. Did he tell you the context of how he was  
4 called the N-word?  
5 A. I can't recall.  
6 Q. Did he tell you if he witnessed someone  
7 calling him the N-word?  
8 A. He told me someone called him, so yes.  
9 Q. Did he tell you how many times he was  
10 called the N-word?  
11 A. I don't believe that ever came up in the  
12 conversation.  
13 Q. Do you know -- only know about one incident  
14 in which he was called the N-word?  
15 A. I can't recall at this moment.  
16 Q. And you can't tell me anything else about  
17 how the N-word was used towards Mr. Wheeler?  
18 A. I wasn't present for the situation, so no.  
19 Q. Did he tell you anything about how the  
20 N-word was used?  
21 A. Not that I can recall.  
22 Q. Any other information that Michael Wheeler  
23 might have about your claims?  
24 MR. ORGAN: Objection. Vague and  
25 ambiguous. Calls for speculation.

Page 213

1 THE WITNESS: You'd have to talk to Michael  
2 Wheeler.  
3 BY MS. ANTONUCCI:  
4 Q. I'm asking you.  
5 A. I don't know. I don't know.  
6 Q. Did you and Michael Wheeler ever discuss  
7 any other incidents of harassment or discrimination?  
8 A. It's a possibility.  
9 Q. Can you remember anything you discussed  
10 beyond what you've told me?  
11 A. I can't recall at this particular moment.  
12 Q. Did Michael Wheeler ever witness any of the  
13 incidents that you found to be offensive while you  
14 were working at the Tesla factory?  
15 A. It's a possibility.  
16 Q. Which incidents do you believe he  
17 witnessed?  
18 A. I don't know.  
19 Q. Did you ever report any of the incidents  
20 that you found offensive while you were working at  
21 the Tesla factory to Michael Wheeler?  
22 A. Yes.  
23 Q. Which incidents did you tell Michael  
24 Wheeler about?  
25 A. Picaninny.

Page 214

1 Q. Anything else?  
2 A. I can't recall at this moment.  
3 Q. What did you tell him about the picaninny?  
4 A. I had called him to see if -- what are his  
5 memories because he was out on the recycling --  
6 doing the recycling at that particular point. He  
7 had came upstairs, him and I believe it was Israel,  
8 or maybe Ishmael. I believe it was Israel.  
9 They came upstairs. I had explained to  
10 them where I was sitting at. I had to leave and  
11 deal with the elevator staff, but yes.  
12 Q. Do you know what actions Michael Wheeler  
13 took as a result of you telling him about the  
14 picaninny?  
15 A. No.  
16 Q. And by "the picaninny," are you referring  
17 to the drawing that was on the bale of cardboard  
18 that you told me about during your last deposition?  
19 A. Yes.  
20 Q. I believe you said Tom Kawasaki also has  
21 information about your claims?  
22 A. Yes.  
23 Q. What information do you believe Tom  
24 Kawasaki has?  
25 A. It was the -- I complained to Tom Kawasaki

Page 215

1 I, GINA V. CARBONE, CSR No. 8249, RPR, RMR, CRR,  
2 CCRR, certify: that the foregoing proceedings were taken  
3 before me at the time and place herein set forth; at  
4 which time the witness was duly sworn; and that the  
5 transcript is a true record of the testimony so given.

6  
7 Witness review, correction and signature

8 was

9 (X) by code. (X) requested.

10 ( ) waived. ( ) not requested.

11 ( ) not handled by the deposition officer due to  
12 party stipulation.

13

14 The dismantling or unbinding of the original  
15 transcript will render the reporter's certificate null  
16 and void.

17 I further certify that I am not financially  
18 interested in the action, and I am not a relative or  
19 employee of any attorney of the parties, nor of any of  
20 the parties.

21 Dated this 7th day of December, 2018.

22

23

24

GINA V. CARBONE

25

CSR #8249, STATE OF CALIFORNIA

Page 292

# EXHIBIT B

MICHAEL JOHN WHEELER

June 12, 2019

Page 1	Page 2
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA</p> <p>-----</p> <p>DEMETRIC DIAZ, OWEN DIAZ, and ) LAMAR PATTERSON, ) Plaintiffs, ) CASE NO. vs. ) 3:17-CV-06748-WHO TESLA, INC. dba TESLA MOTORS, ) INC.; CITISTAFF SOLUTIONS, ) INC.; WEST VALLEY STAFFING ) GROUP; CHARTWELL STAFFING ) SERVICES, INC.; and DOES 1-50, ) inclusive, ) Defendants. )</p> <p>-----</p> <p>DEPOSITION OF MICHAEL JOHN WHEELER WEDNESDAY, JUNE 12, 2019</p> <p>Reported by: BY: MELINDA M. SELLERS, CSR# 10686, RMR, CRC, CRR, CCRR</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Deposition of MICHAEL JOHN WHEELER, taken on behalf of PLAINTIFFS, at 180 Grand Ave., Suite 1380, Oakland, California, commencing at 12:18 p.m., WEDNESDAY, JUNE 12, 2019, before Melinda M. Sellers, Certified Shorthand Reporter No. 10686, pursuant to Notice.</p>
Page 3	Page 4
<p>1 APPEARANCES OF COUNSEL: 2 FOR PLAINTIFFS: 3 CALIFORNIA CIVIL RIGHTS LAW GROUP 4 BY: LAWRENCE A. ORGAN, ATTORNEY AT LAW 5 332 San Anselmo Avenue 6 San Anselmo, California 94960-2664 7 Telephone: (415) 453-4740 8 Email: larry@civilrightsca.com 9 10 FOR DEFENDANT TESLA, INC.: 11 SHEPPARD MULLIN RICHTER &amp; HAMPTON LLP 12 BY: PATRICIA M. JENG, ATTORNEY AT LAW 13 Four Embarcadero Center, 17th Floor 14 San Francisco, California 94111-4109 15 Telephone: (415) 434-9100 16 Email: pjeng@sheppardmullin.com 17 18 FOR DEFENDANT NEXTSOURCE, INC.: 19 FISHER PHILLIPS LLP 20 BY: VINCENT J. ADAMS, ATTORNEY AT LAW 21 One Embarcadero Center, Suite 2050 22 San Francisco, California 94111 23 Telephone: (415) 490-9036 24 Email: vadams@fisherphillips.com 25</p>	<p>1 APPEARANCES OF COUNSEL (CONTINUED): 2 FOR DEFENDANT CITISTAFF SOLUTIONS, INC.: 3 LAFAYETTE &amp; KUMAGAI 4 BY: SUSAN T. KUMAGAI, ATTORNEY AT LAW 5 1300 Clay Street, Suite 810 6 Oakland, California 94612 7 Telephone: (415) 357-4600 8 Email: skumagai@lkclaw.com 9 10 ALSO PRESENT: 11 SAJA SPEARMAN, INTERN/VIDEOGRAPHER 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

1 (Pages 1 to 4)

Bridget Mattos & Associates  
(415) 747-8710

MICHAEL JOHN WHEELER

June 12, 2019

Page 57

1       **A. I feel like -- I hope I attached that in**  
 2       **the email.**  
 3       Q. Okay. After this incident with the feces  
 4       on the seat, did anything -- was there anything else  
 5       other than that that happened to you, other than  
 6       that and the N-word incident that you felt was --  
 7       well, strike that.  
 8       Do you think that the feces was put on your  
 9       seat in part because you were African-American?  
 10       **A. I could assume that, but I can't say for**  
 11       **sure. So I will not say that. I will say it was an**  
 12       **act against me, but it could have been anyone.**  
 13       Q. What was the timing of that? Do you  
 14       remember when that was?  
 15       **A. Timing --**  
 16       Q. The feces on the seat.  
 17       **A. It would have had to have been 2:00 a.m. to**  
 18       **3:00, in between there. Would have been when I**  
 19       **would have taken my lunch.**  
 20       Q. Okay. In terms of -- this was after you  
 21       became a supervisor --  
 22       **A. Yes.**  
 23       Q. -- right?  
 24       And you were issued the cart after you  
 25       became a supervisor; is that right?

Page 59

1       Q. Okay.  
 2       **A. Just safety hazards around the workplace.**  
 3       Q. Okay. Tell me about the safety hazards  
 4       around the workplace that you observed.  
 5       **A. If you guys -- I'm sorry. I don't know if**  
 6       **you guys ever have driven past Tesla, but if you**  
 7       **have, a couple years ago there was a giant grim**  
 8       **reaper that they had posted outside of Tesla, some**  
 9       **workers. Because, I don't know, that place is a**  
 10       **very unsafe place to work and people get injured all**  
 11       **the time, fingers crushed, I'm not gonna say legs**  
 12       **severed, but hit by forklifts, fires. I think we**  
 13       **had a couple deaths while I was there. But yeah.**  
 14       Q. Let me stick with the racial stuff. At  
 15       some point in time, Owen came to you and complained  
 16       about something -- about something that happened to  
 17       him, right?  
 18       **A. Yes. So the specific incident is the**  
 19       **elevator incident --**  
 20       Q. Okay.  
 21       **A. -- involving Ramon.**  
 22       Q. Okay.  
 23       **A. Or --**  
 24       Q. Ramon Martinez?  
 25       **A. Yes.**

Page 58

1       **A. This is the specific cart that only we use**  
 2       **in recycling, the supervisors, on morning, swing,**  
 3       **and grave. So it's the only one in the factory.**  
 4       **Very distinguishable.**  
 5       Q. Okay.  
 6       MS. KUMAGAI: Counsel, when it's a good time,  
 7       can we take a short break?  
 8       MR. ORGAN: Sure.  
 9       MS. KUMAGAI: I just want to get some water.  
 10       MS. SPEARMAN: Off the record at 1:21 p.m.  
 11       (Recess taken.)  
 12       MS. SPEARMAN: We are back on the record at  
 13       1:29 p.m.  
 14       BY MR. ORGAN:  
 15       Q. Did you ever follow up with Victor Quintero  
 16       to find out if he had done anything about the feces  
 17       on the seat?  
 18       **A. That would all be in the emails.**  
 19       Q. Okay.  
 20       **A. Any exchange back and forth, that was all**  
 21       **done through email.**  
 22       Q. Okay. Were there any other pictures you  
 23       took of things that happened to you that you can  
 24       recall reporting?  
 25       **A. Not that I can -- no, I don't think so.**

Page 60

1       Q. Okay. I'm just gonna -- I'm gonna show you  
 2       what's been previously marked as --  
 3       **A. The pictures --**  
 4       Q. -- Exhibit 128.  
 5       I don't know why I only have two copies. I  
 6       apologize, Counsel. It's Exhibit 128.  
 7       So Exhibit 128, for the record, is a  
 8       four-page document Bates-stamped TESLA 20 to 24 --  
 9       or 23, and it's got some pictures at the end of the  
 10       email from Mr. Diaz to Ed Ramiro.  
 11       Did you ever see the email that was --  
 12       that's on page 22, the third page?  
 13       **A. I did not see the emails --**  
 14       Q. Okay.  
 15       **A. -- involving this incident. But I did see**  
 16       **the bale.**  
 17       Q. You saw the actual --  
 18       **A. I saw the actual bale.**  
 19       Q. So you saw the bale of cardboard that's in  
 20       Exhibit 128 that has the Picaninny and the "Boo"  
 21       underneath, correct?  
 22       **A. Yes.**  
 23       Q. And tell me, what were the circumstances in  
 24       which you happened to see the actual picture, which  
 25       is -- I guess a close-up of it is the fourth page of

15 (Pages 57 to 60)

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MICHAEL JOHN WHEELER

June 12, 2019

<p style="text-align: right;">Page 129</p> <p>1 MR. ORGAN: Okay.</p> <p>2 MS. KUMAGAI: I just wanted to go around</p> <p>3 before --</p> <p>4</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MS. KUMAGAI:</p> <p>7 Q. Just to close the loop on my prior</p> <p>8 questioning, about your conversations with CitiStaff</p> <p>9 now that Tesla's counsel, I guess, refreshed your</p> <p>10 recollection that you got your tire assembly job</p> <p>11 through CitiStaff --</p> <p>12 A. Yes.</p> <p>13 Q. -- is that right? Okay.</p> <p>14 Prior to applying to CitiStaff, did you</p> <p>15 have any conversations with Owen Diaz about</p> <p>16 CitiStaff?</p> <p>17 A. Not that I can recall.</p> <p>18 Q. Okay. And after you applied to CitiStaff,</p> <p>19 do you recall conversations with anybody at</p> <p>20 CitiStaff regarding any incidences that you were</p> <p>21 aware of at Tesla?</p> <p>22 A. None at all.</p> <p>23 MS. KUMAGAI: Okay. That's all I have.</p> <p>24 MR. ORGAN: Okay.</p> <p>25 MS. SPEARMAN: This adjourns the deposition of</p>	<p style="text-align: right;">Page 130</p> <p>1 Michael Wheeler. The time is now 2:59 p.m.</p> <p>2 (The deposition proceedings concluded</p> <p>3 at 2:59 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7 -----</p> <p>8 MICHAEL JOHN WHEELER</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 131</p> <p>1 STATE OF CALIFORNIA )</p> <p>2 ) ss</p> <p>3 COUNTY OF CALAVERAS )</p> <p>4 I hereby certify that the witness in the</p> <p>5 foregoing deposition of MICHAEL JOHN WHEELER was by</p> <p>6 me duly sworn to testify to the truth, the whole</p> <p>7 truth, and nothing but the truth in the</p> <p>8 within-entitled cause; that said deposition was taken</p> <p>9 at the time and place herein named; that the</p> <p>10 deposition is a true record of the witness's</p> <p>11 testimony as reported by me, a duly certified</p> <p>12 shorthand reporter and a disinterested person, and</p> <p>13 was thereafter transcribed into typewriting by</p> <p>14 computer.</p> <p>15 I further certify that I am not interested</p> <p>16 in the outcome of the said action, nor connected</p> <p>17 with, nor related to any of the parties in said</p> <p>18 action, nor to their respective counsel.</p> <p>19 IN WITNESS WHEREOF, I have hereunto set my</p> <p>20 hand this 24th day of June, 2019.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 _____</p> <p>25 MELINDA M. SELLERS, CSR NO. 10686</p> <p>STATE OF CALIFORNIA</p>	

33 (Pages 129 to 131)

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